CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 758

HEARD AT MONTREAL, THURSDAY, MAY 22ND,1980

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES - SYBTEM BOARD OF ADJ. No. 15

DISPUTE:

The dismissal of Train Dispatcher P. W. Senychych of Winnipeg, Manitoba for alleged lap of train order authority.

JOINT STATEMENT OF ISSUE:

Mr. P. W. Senychych has been dismissed for his alleged failure to properly address a Form R Train Order on November 20th, 1979.

The Brotherhood contends that the dismissal is not warranted or justified and requested that he be reinstated to duty with time paid for time lost.

The Company has denied the request.

FOR THE EMPLOYEE:	FOR THE COMPANY:
(SGD.) D. C. DUQUETTE	(SGD.) R. J.
GENERAL CHAIRMAN	GENERAL MANAGER - O & M.

There appeared on behalf of the Company:

M. M. Yorston - Labour Relations Officer, CP Rail, Montreal
J. A. Sampson - Supervisor Labour Relations, CP Rail, Winnipeg
J. J. Zinger - Asst. Supt. Transportation, " " "

And on behalf of the Brotherhood:

D. C. Duquette - General Chairman, B.R.A.C., Montreal

AWARD OF THE ARBITRATOR

On November 20, 1979, the grievor was working from 1600 to 2359 as Train Dispatcher, Winnipeg, and was responsible for the movement of trains on the Kaministiquia and Ignace subdivisions. At 1850 on that day, the grievor completed Train Order No. 43, addressed to eastward trains and Extra 4731 East at Ignace. This order read as follows:

> After Extra 5731 West arrives at English River Extra 4731 East has right over opposing trains on Westward track English River to Upsala.

This order thus authorized train Extra 4731 East to cross over to the Westward track at English River, and to proceed thereon in an easterly movement as far as Niblock, a distance of 14.3 miles.

At 2012 that day the grievor completed Train Order No. 47 addressed to Work Extra 8541 West, at Niblock. Order No. 47 gave Extra 7541 West authority to move westward from Niblock past English River to Ignace. Extra 8541 west had not been sent Train Order No. 43, which had authorized an opposing movement.

Thus, the grievor had created a situation in which two trains had authority to run in opposite directions against each other on the same track between English River and Niblock. Fortunately, the crew of Extra 8541 West became aware, by train radio, that Extra 4731 East was moving against the current of traffic, and brought the matter to the attention of the dispatcher, who then issued Train Order No. 43 to the crew of Extra 8541 West at Niblock. That train was still at Niblock and was instructed to remain in the siding.

Luckily, disaster was avoided. The grievor, when creating the movement of Extra 8541 West, opposing Extra 4731 East, ought to have issued Train Order No. 43 to the crew of Extra 8541 West before issuing the order authorizing their own movement, and ought to have issued a restricting order to Extra 8541 West. The failure is obviously a grave one, and was a very serious violation of the Rules. It is not a satisfactory answer for the grievor to say that he had train Extra 8541 West under "control", in that the conductor of that train was going to inform the grievor when he was ready to leave Niblock. The fact is that opposing movements had been authorized.

The grievor's conduct seems very similar to that which led to the discipline of another dispatcher, dealt with in Case No 558. In that case the grievor was demoted, a form of discipline which was approved of for that particular type of offence. That might have been appropriate in the instant case as well. The penalty imposed on the grievor in the instant case is a far heavier one, but I can see no very clear distinction between the two cases which might justify the great difference in penalties.

The union contended that the grievor did not have sufficient training and that he was working with inexperienced operators. In fact, however,the grievor had had considerable experience as a dispatcher, even if he may not have had prolonged experience with respect to any one area. The inexperience of the operators, if such was the case, might add to the difficulties of his job, but would not justify his failure to follow rules which applied directly to him. The grievor, however, did apparently consider that he had some control over the situation by virtue of his understanding that the conductor of Extra 8541 West would advise him when he was ready to leave Niblock. As I have indicated above, this was not a proper form of control, and does

not justify failure to meet the requirements of the Uniform Code. It may, however, have some weight in assessing the penalty imposed.

In all of the circumstances, and having in mind Case No. 558, it is my conclusion that the penalty of discharge was too severe in this case. While a demotion might have been an appropriate penalty at the time, it is my view that the best resolution of the matter is to direct the reinstatement of the grievor without loss of seniority, but without compensation for loss of earnings. The company may, before assigning the grievor to work as a dispatcher, require him to pass any appropriate examinations normally given with respect to such work. He should be reinstated in employment, however, upon receipt of this award.

Arbitrator